

PREVAILED

Roll Call No. \_\_\_\_\_

FAILED

Ayes \_\_\_\_\_

WITHDRAWN

Noes \_\_\_\_\_

RULED OUT OF ORDER

## HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that House Bill 1153 be amended to read as follows:

- 1 "Page 16, between lines 38 and 39, begin a new paragraph and  
2 insert:  
3 SECTION 5. IC 6-8.1-10-2.1, AS AMENDED BY  
4 P.L.211-2007, SECTION 44, IS AMENDED TO READ AS  
5 FOLLOWS: Sec. 2.1. *Effective 1-1-2008. See OCR attorney for*  
6 *section currently in effect.* (a) If a person:  
7 (1) fails to file a return for any of the listed taxes;  
8 (2) fails to pay the full amount of tax shown on the person's  
9 return on or before the due date for the return or payment;  
10 (3) incurs, upon examination by the department, a deficiency  
11 that is due to negligence;  
12 (4) fails to timely remit any tax held in trust for the state; or  
13 (5) is required to make a payment by electronic funds transfer  
14 (as defined in IC 4-8.1-2-7), overnight courier, or personal  
15 delivery and the payment is not received by the department by  
16 the due date in funds acceptable to the department;  
17 the person is subject to a penalty.  
18 (b) Except as provided in ~~subsection~~ **subsections (g) and k**, the  
19 penalty described in subsection (a) is ten percent (10%) of:  
20 (1) the full amount of the tax due if the person failed to file the  
21 return;  
22 (2) the amount of the tax not paid, if the person filed the return  
23 but failed to pay the full amount of the tax shown on the  
24 return;

1 (3) the amount of the tax held in trust that is not timely  
2 remitted;

3 (4) the amount of deficiency as finally determined by the  
4 department; or

5 (5) the amount of tax due if a person failed to make payment  
6 by electronic funds transfer, overnight courier, or personal  
7 delivery by the due date.

8 (c) For purposes of this section, the filing of a substantially  
9 blank or unsigned return does not constitute a return.

10 (d) If a person subject to the penalty imposed under this section  
11 can show that the failure to file a return, pay the full amount of tax  
12 shown on the person's return, timely remit tax held in trust, or pay  
13 the deficiency determined by the department was due to reasonable  
14 cause and not due to willful neglect, the department shall waive the  
15 penalty.

16 (e) A person who wishes to avoid the penalty imposed under this  
17 section must make an affirmative showing of all facts alleged as a  
18 reasonable cause for the person's failure to file the return, pay the  
19 amount of tax shown on the person's return, pay the deficiency, or  
20 timely remit tax held in trust, in a written statement containing a  
21 declaration that the statement is made under penalty of perjury. The  
22 statement must be filed with the return or payment within the time  
23 prescribed for protesting departmental assessments. A taxpayer may  
24 also avoid the penalty imposed under this section by obtaining a  
25 ruling from the department before the end of a particular tax period  
26 on the amount of tax due for that tax period.

27 (f) The department shall adopt rules under IC 4-22-2 to prescribe  
28 the circumstances that constitute reasonable cause and negligence for  
29 purposes of this section.

30 (g) A person who fails to file a return for a listed tax that shows  
31 no tax liability for a taxable year, other than an information return  
32 (as defined in section 6 of this chapter), on or before the due date of  
33 the return shall pay a penalty of ten dollars (\$10) for each day that  
34 the return is past due, up to a maximum of two hundred fifty dollars  
35 (\$250).

36 (h) A corporation which otherwise qualifies under  
37 IC 6-3-2-2.8(2) but fails to withhold and pay any amount of tax  
38 required to be withheld under IC 6-3-4-13 shall pay a penalty equal  
39 to twenty percent (20%) of the amount of tax required to be withheld  
40 under IC 6-3-4-13. This penalty shall be in addition to any penalty  
41 imposed by section 6 of this chapter.

42 (i) Subsections (a) through (c) do not apply to a motor carrier  
43 fuel tax return.

44 (j) If a partnership or an S corporation fails to include all  
45 nonresidential individual partners or nonresidential individual  
46 shareholders in a composite return as required by IC 6-3-4-12(h) or  
47 IC 6-3-4-13(j), a penalty of five hundred dollars (\$500) per  
48 partnership or S corporation is imposed on the partnership or S  
49 corporation.

50 **(k) If a person subject to a penalty for any of the reasons**  
51 **set forth in subsection (a)(1) through (a)(5) pays the full amount**

1 of the tax owed not more than thirty (30) days after the associated  
2 due date, the penalty is four percent (4%) of:

3 (1) the full amount of the tax due if the person failed to file  
4 the return;

5 (2) the amount of the tax not paid, if the person filed the  
6 return but failed to pay the full amount of the tax shown on  
7 the return;

8 (3) the amount of the tax held in trust that is not timely  
9 remitted;

10 (4) the amount of deficiency as finally determined by the  
11 department; or

12 (5) the amount of tax due if the person failed to make  
13 payment by electronic funds transfer, overnight courier, or  
14 personal delivery by the due date."

15 Renumber all SECTIONS consecutively.

(Reference is to 1153 as printed January 25, 2008.)

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Representative BURTON